

## RULES BY DISTRICT COURT

### ATTORNEYS AND STUDENT PRACTICE

83.I.01: *Roll of Attorneys.* The Bar of this Court consists of those attorneys heretofore admitted and those attorneys hereafter admitted as prescribed by Local Civil Rule 83.I.01-.03.

83.I.02: *Eligibility.* A member in good standing of the Bar of the Supreme Court of South Carolina is eligible for admission to the Bar of this Court.

83.I.03: *Procedure for Admission.* Before being presented to the District Court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- (A) Is a member in good standing of the Bar of the Supreme Court of South Carolina;
- (B) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules), and the Local Civil and Criminal Rules of the Court; and
- (C) Has either completed the required trial experiences listed in Rule 403 of the South Carolina Appellate Court Rules for the examination and admission of persons to practice in South Carolina or has completed a “judicial clerkship with equivalent courtroom experience” as defined below and certified by the judge for whom the clerkship was served.

A “judicial clerkship with equivalent courtroom experience” requires that all of the following be satisfied: (1) the applicant must have served for at least one year as a law clerk to a federal or state judge; (2) the applicant must have observed the equivalent of at least four complete trials (jury selection through verdict); (3) the applicant must have observed at least six oral arguments of motions or appeals; and (4) at least two of the trial equivalents and two of the oral arguments must have been in the federal court system. An applicant may demonstrate satisfaction of these requirements by submitting a certification signed by the judge for whom the clerkship was served in the form provided by the Clerk of Court. To the extent an applicant relies on experiences beyond the clerkship to satisfy the requirements of (2)-(4) above, he or she should attach a partially completed state court form (S.C.C.A. Rule 403(e)) or comparable documentation of the required courtroom experience.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the Bar of this Court that, to the best of their

knowledge, information, and belief, the applicant is of good moral character and professional reputation and meets the requirements for admission.

The applicant shall file the application, accompanied by a fee of one hundred and fifty dollars (\$150), with the Clerk of this District Court. If the application is in order and upon approval of the Court, the Clerk of Court shall then issue to the applicant a certificate of admission to the Bar of this Court.

83.I.04:        *Representation by Local Counsel who Must Sign all Pleadings.* Litigants in civil and criminal actions, except for parties appearing *pro se*, must be represented by at least one member of the Bar of this Court who shall sign each pleading, motion, discovery procedure, or other document served or filed in this Court. The attorney identification number is also required on each pleading, motion, discovery procedure, or other document served or filed in this District Court.

83.I.05:        *Appearances by Attorneys not Admitted in the District.*

- (A)    Upon motion of an attorney admitted to practice before this Court, any person who is a member in good standing of the Bar of a United States District Court and the Bar of the highest court of any state or the District of Columbia may be permitted to appear in a particular matter in association with a member of the Bar of this Court. A motion seeking admission under this Rule
  - (1)    shall be accompanied by an Application and Affidavit setting forth the movant's qualifications for admission and the movant's agreement to abide by the ethical standards governing the practice of law in this Court;
  - (2)    shall be submitted to this Court upon the forms prescribed by this Court which can be obtained on this Court's website or from the Clerk of Court;
  - (3)    shall be accompanied by an application fee of one hundred and fifty dollars (\$150); and

(4) shall include a certificate of consultation. *See* Local Civil Rule 7.02.<sup>20</sup>

- (B) The appearance of an attorney pursuant to this Rule shall confer jurisdiction upon this Court for any alleged misconduct in any matter related to the action for which the appearance is allowed. The Court may revoke admission under this Local Civil Rule at its discretion.
- (C) This Rule is intended to allow for occasional appearances by attorneys who do not conduct a substantial portion of their practices in this District. It is not intended to substitute for regular admission to the Bar of this Court. In determining whether admission under this Rule would violate its intended purpose, the Court may consider, inter alia, whether the attorney resides in South Carolina (and, if so, the length of the residence), the frequency with which the attorney appears in the state and federal courts located in this state, the proportion of the attorney's practice attributable to cases filed in South Carolina, and other factors suggested by *South Carolina Medical Malpractice Joint Underwriting Ass'n v. Froelich*, 377 S.E.2d 306 (S.C. 1989), which, while not binding, has been adopted as a guide by this Court.

83.I.06: *Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear.* Pleadings and other documents filed in a case where an attorney appears who is not admitted to the Bar of this Court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this Local Civil Rule and the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served upon only the associated local counsel. Unless excused by the Court, the associated local counsel shall be present at all pretrial conferences, hearings and trials and may attend discovery proceedings. Local counsel is expected to be prepared to actively participate if necessary.

83.I.07: *Withdrawal of Appearance.* No attorney whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the Court. Any request to withdraw shall: (1) be filed with a certification that the motion has been served on the client or with a consent to withdrawal signed by the client; (2) shall provide the Court with a mailing address and phone number for the client; and (3) if the client is a corporation, shall

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<sup>20</sup> The consultation requirement found in Local Civil Rule 7.02 is applicable to motions under this Local Civil Rule. It is the general practice in this District to grant motions under Local Civil Rule 83.I.05 immediately upon receipt by the Court, if they are proper in form and absent notice that opposing counsel has indicated an intention to object. Prior consultation and disclosure of opposing counsel's stated intention are necessary to facilitate this process.

confirm that the client has been advised that a corporation cannot proceed without counsel and that counsel must be admitted in this District.

83.I.08: *Rules of Disciplinary Enforcement (“RDE”)*. All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding (*pro hac vice*) shall be admitted subject to the following rules, conditions, and provisions.

*RDE RULE 1*  
*ATTORNEYS CONVICTED OF CRIMES*

- (A) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears that the interests of justice require the same.
- (B) The term “serious crime” shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of any other to commit a “serious crime.”
- (C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based, in whole or in part, upon the conviction.
- (D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court, in addition to suspending that attorney in accordance with the provisions of this Local Civil Rule, shall also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
- (E) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a “serious crime,” the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court in its discretion may make no references with respect to convictions for minor offenses.
- (F) An attorney suspended under the provisions of this Rule will be immediately reinstated upon the filing of a certificate demonstrating that the underlying conviction of a serious

crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

*RDE RULE II*  
*DISCIPLINE IMPOSED BY OTHER COURTS*

- (A) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, inform the Clerk of Court in writing within ten (10) days of such action.
- (B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court, this Court shall forthwith issue a notice directed to the attorney containing:
  - (1) A copy of the judgment or order from the other court; and
  - (2) An order to show cause directing that the attorney inform this Court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.
- (C) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.
- (D) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
  - (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
  - (2) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
  - (3) That the imposition of the same discipline by this Court would result in grave injustice; or

- (4) That the misconduct established is deemed by this Court to warrant substantially different discipline. Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.
- (E) In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.
- (F) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

### *RDE RULE III*

#### *DISBARMENT ON CONSENT OR RESIGNATION IN OTHER COURTS*

- (A) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.
- (B) Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

### *RDE RULE IV*

#### *STANDARDS FOR PROFESSIONAL CONDUCT*

- (A) For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court for a definite time, fined, and/or reprimanded, either publicly or privately, or subjected to other disciplinary action as the circumstances may warrant.
- (B) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Code of Professional Responsibility adopted by this

Court is the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules) adopted by the Supreme Court of the State of South Carolina, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court.

*RDE RULE V*  
*DISCIPLINARY PROCEEDINGS*

- (A) When misconduct or allegations of misconduct which, as substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, that judge shall petition the chief judge to (1) refer the matter to the appropriate state disciplinary authority for investigation or prosecution, or (2) refer the matter to the United States Attorney or, if the United States Attorney has a conflict of interest, to other selected counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Should the Chief Judge be disqualified, the most senior active District Judge shall have the responsibility of enforcing this section. Should the matter be referred to a state disciplinary authority, or should there be a parallel state disciplinary proceeding, the Chief Judge may provide to such authority information and documents pertinent to the investigation, subject to the requirements of Rule 6(e), Federal Rules of Criminal Procedure, and an appropriate protective order.
- (B) Counsel appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, as well as the respondent-attorney, shall have the authority to issue subpoenas pursuant to Rule 17 of the Federal Rules of Criminal Procedure.
- (C) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is another proceeding pending against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons for such recommendation.
- (D) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court, upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally, or by



mail, why the attorney should not be disciplined. The respondent-attorney shall have the right to be represented by counsel in these proceedings.

- (E) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the chief judge shall set the matter for prompt hearing before a panel of three judges of this Court; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this Court, the complaining judge shall not serve on the panel.
- (F) The senior judge of the three-judge panel, within a reasonable time following the hearing, shall provide to the District Court a written report which shall include a recommendation as well as a transcript of the hearing and all pleadings and evidence.
- (G) After receiving the report, the District Court, sitting *en banc*, shall by written order make a final determination.
- (H) Misconduct, as the term is used herein, means any one or more of the following:
  - (1) Violation of any provision of the oath of office taken upon admission to practice of law;
  - (2) Violation of any provision of the South Carolina Rules of Professional Conduct as adopted by this Court;
  - (3) Commission of a crime involving moral turpitude;
  - (4) Conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute;
  - (5) Conduct demonstrating a lack of professional competence in the practice of law;
  - (6) Conduct tending to obstruct the Court's disciplinary investigation;
  - (7) Conduct constituting a serious crime as defined in RDE Rule I(B);
  - (8) Conduct violating applicable rules of professional conduct of another jurisdiction.

*RDE RULE VI*  
*DISBARMENT ON CONSENT WHILE UNDER*  
*DISCIPLINARY INVESTIGATION OR PROSECUTION*

- (A) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:
  - (1) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
  - (2) The attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;
  - (3) The attorney acknowledges that the material facts so alleged are true; and
  - (4) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.
- (B) Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.
- (C) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

*RDE RULE VII*  
*REINSTATEMENT*

- (A) After disbarment or suspension. An attorney suspended or disbarred may not resume practice until reinstated by order of this Court.
- (B) Time of application following disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment.

- (C) **Hearing on application.** Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the chief judge of this Court. Upon receipt of the petition, the chief judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before a three-judge panel of this Court; provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court, the complaining judge shall not serve on the panel. The judges assigned to the matter shall promptly, after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency, and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or to the administration of justice or subversive of the public interest. The senior judge of the three-judge panel, within a reasonable time following the hearing, shall provide to the District Court a written report which shall include a recommendation pursuant to subparagraph F of this section. After receiving the report, the District Court, sitting *en banc*, shall by written order make a final determination and enter judgment pursuant to subparagraph F of this section.
- (D) ***Duty of Counsel.*** In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.
- (E) ***Deposit for Costs of Proceeding.*** Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.
- (F) ***Conditions of Reinstatement.*** If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. The Court may impose any conditions of reinstatement that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the District Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

- (G) *Successive Petitions.* No petition for reinstatement under this Rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

*RDE RULE VIII  
SERVICE OF PAPERS AND OTHER NOTICES*

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the last address of record with the Clerk of this Court. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the last address of record with the Clerk of this Court; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

*RDE RULE IX  
APPOINTMENT OF COUNSEL*

Whenever counsel other than the United States Attorney is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, this Court shall appoint as counsel one or more members of the Bar of this Court. The respondent-attorney may move to disqualify the United States Attorney or any other attorney so appointed on grounds of conflict of interest. Any motion for disqualification shall be determined by the chief judge or, should the chief judge be disqualified, the most senior active judge. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

*RDE RULE X  
DUTIES OF THE CLERK OF COURT*

- (A) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of Court shall promptly obtain a certificate and file it with this Court.
- (B) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk of Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of Court shall promptly obtain a certified copy or exemplified copy of the disciplinary judgment or order and file it with this Court.

- (C) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other Court, the Clerk of Court, within ten (10) days of that conviction, disbarment, suspension, censure, or disbarment on consent, shall transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.
- (D) The Clerk of Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

*RDE RULE XI  
JURISDICTION*

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, including, but not limited to, the power to impose sanctions and to institute proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

*RDE RULE XII  
EFFECTIVE DATE*

Any amendments to these disciplinary enforcement rules shall become effective immediately upon the entry and filing of any Order, provided that any formal disciplinary proceedings then pending before this Court shall be concluded under the procedure existing prior to the effective date of these amendments.

83.I.09:       *Student Practice.*

- (A) Upon the approval of the judge to whom the case is assigned, an eligible law student with the written consent of an indigent and the indigent's attorney of record may appear in this Court on behalf of that indigent in any case. Upon the written consent of the United States Attorney or his or her authorized representative and the consent of the presiding judge, an eligible law student may also appear in this Court on behalf of the United States. Upon the written consent of the South Carolina Attorney General or his or her authorized representative and the consent of the presiding judge, an eligible law student may also appear in this Court on behalf of the State of South Carolina. In each case, the written consent shall be filed with the Clerk of Court.

- (B) An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this Court, but such pleadings, briefs or other documents must be signed by the attorney of record. A student may also participate in Court proceedings with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of the student's work. The attorney of record should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.
- (C) In order to make an appearance pursuant to this Local Civil Rule, the law student must:
- (1) Be duly enrolled in a law school approved by the American Bar Association;
  - (2) Have completed legal studies amounting to at least four (4) semesters (or the equivalent if the school is on some basis other than a semester basis), be enrolled in a clinical law course, and appear only as a requirement of that course;
  - (3) Be certified by the Dean of the law school as being of good character and competent legal ability, which certification shall be filed with the Clerk of Court and may be withdrawn by the Dean at any time by mailing notice to the Clerk of Court;
  - (4) Be introduced to the Court by an attorney admitted to practice before this Court;
  - (5) Neither ask for nor receive any compensation or remuneration of any kind for legal services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from making such charges for its services as it may otherwise properly require; and
  - (6) Certify in writing that the student has read and is familiar with the South Carolina Rules of Professional Conduct.

## EXHIBITS AND COURT REPORTERS

83.II.01:       *Handling of Exhibits.* The Clerk of Court shall be the custodian of all exhibits admitted into evidence. However, during any civil or criminal proceeding, the Court may order an attorney or a law enforcement agency to take possession of any exhibit(s) and be responsible for the safekeeping of the exhibit(s).

Upon the entry of final judgment, the Clerk of Court may, at any time following the expiration of thirty (30) days, notify the attorneys of record and the parties that the Clerk of Court intends to dispose of the exhibits in the manner indicated in the notice. If no attorney of record or a party in interest takes custody of or interposes an objection within ten (10) days of the posting of the notice, the Clerk of Court shall be authorized to dispose of the exhibits in the manner stated, unless otherwise ordered by the Court.

In the event of an appeal in a case involving exhibits that could not be mailed to the appellate court or stored in the Clerk of Court's facilities, the Court may, upon request of the Clerk of Court, transfer custody of these exhibits to the attorney or law enforcement agency offering the exhibit. Those exhibits not transmitted as part of the record on appeal should be retained and safeguarded by the attorney to be made available for use by the appellate court upon request.

83.II.02:       *Court Reporters.* The Clerk of Court shall have supervisory and managerial authority over court reporters with the advice and consent of the Court, pursuant to the order of the District Court filed August 25, 1986 (M-86-3). A copy of this order may be obtained from the Clerk of Court.

## FAIR TRIAL DIRECTIVES<sup>21</sup>

83.III.01: *Court Personnel.* All Court supporting personnel, including, but not limited to, marshals, deputy marshals, court clerks and office personnel, bailiffs, court reporters, and employees or subcontractors retained by the Court or the Marshal, and the judge's office personnel, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending civil case that is not a part of the public record of the Court which has been filed and served on the parties to the proceeding. Further, all such personnel are forbidden to divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public or in the case of jury trials outside the presence of the jury.

83.III.02: *Attorneys.*

- (A) Except to the extent necessary to prepare a case, all lawyers are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending civil case that is not a part of the public record of the Court which has been filed and served on the parties to the proceeding. Further, all such persons are forbidden to divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public or in the case of jury trials outside the presence of the jury.
- (B) Nothing contained in these rules shall prohibit a lawyer from making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue adversely prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. However, any statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

83.III.03: *Copies of Public Records.* Any person may obtain copies of public records from the Clerk of Court upon payment of copying fees. Representatives of federal agencies may obtain copies without charge.

83.III.04: *Conduct of Judicial Proceedings.* In any case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

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<sup>21</sup> Fair trial directives relating to criminal matters are more extensive and may be found in the Local Criminal Rules.



83.III.05:       *Photographing and Reproducing Court Proceedings.* The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings, whether or not court is actually in session, is prohibited. The Court may, however, permit: (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record; and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial or naturalization proceedings.

## REMOVAL PROCEDURES

83.IV.01:     *Service and Filing of Notice of Removal.* Service upon all adverse parties of a notice of removal filed pursuant to 28 U.S.C. § 1446(a) and the filing of such notice with the appropriate state court clerk shall constitute compliance with the requirements of 28 U.S.C. § 1446(d).

83.IV.02:     *Contents of Notice of Removal.* Where removal is based on jurisdiction under 28 U.S.C. § 1332, the short and plain statement of the grounds for removal shall contain a statement of the date of the commencement of the action.

## PRETRIAL BRIEF REQUIREMENTS

83.V: *[Pretrial brief requirements have been moved to Local Civil Rule 26.05 effective December 1, 2000.]*

## CONDUCT OF TRIAL

83.VI.01: *Opening Statement.* Counsel for any party may summarize their pleadings to the jury or make a statement to the jury of the ultimate facts alleged in the pleadings and their theory of the case, but counsel shall not argue the case during the opening statement. The pleadings shall not be submitted to the jury for its deliberations.

83.VI.02: *Examination of Witness.* One counsel only, on each side, shall examine or cross-examine a witness. During examination in open court, the examining counsel shall stand.

83.VI.03: *Scope of Redirect.* Redirect examination in both civil and criminal trials shall be limited only to new matters brought out on cross-examination.

83.VI.04: *Closing Argument of Counsel.* In the trial of a civil action, the plaintiff shall open and conclude the testimony and argument unless the plaintiff's entire case shall be admitted by the defendant's pleadings, and the controversy shall be wholly upon matter of counterclaim or affirmative defense interposed by the defendant. A full opening of the case, both in testimony and argument, shall be made by the party having the opening, and the reply shall (unless under the circumstances otherwise ordered by the Court), both in testimony and argument, be restricted to a reply to new matter. Closing arguments in criminal cases are governed by Fed. R. Crim. P. 29.11. The time allowed for argument in both criminal and civil cases shall be limited by the Court as the cause may seem to require.

83.VI.05: *Excusing Witnesses.* In both criminal and civil cases, every witness is automatically excused when he or she steps off the witness stand, unless one of the parties objects.

## SOCIAL SECURITY CASES

83.VII.01: *Copies of Pleadings.* An original for the Court and three (3) copies for service of the complaint and summons must be filed in social security cases. Only an original of all other pleadings must be filed with the Clerk of Court together with a certificate showing proof of service upon the United States Attorney.

83.VII.02: *Reference to Magistrate Judge.*

- (A) After the briefing schedule (as set out in Local Civil Rules 83.VII.04 and 83.VII.05), the case will be referred to a United States Magistrate Judge for either a recommendation or a final order, dependent upon the consent of the parties and the District Court.
- (B) The Court will issue an order referring social security cases to the assigned Magistrate Judge for final disposition in those cases where all parties have submitted their consent to such referral.

83.VII.03: *Answer of the Commissioner.* Because of the large volume of social security cases being filed in this District, the United States has been unable to obtain certified copies of transcripts required by 42 U.S.C. § 405(g) to be filed as a part of its answer within the sixty-day (60-day) time period. Therefore, the Commissioner is granted an additional sixty (60) days beyond the time otherwise allowed by law for the filing of its answer without the necessity of a motion so requesting.

83.VII.04: *Petitioner's Brief.* After the filing of an answer, the petitioner may file a written brief in the Clerk of Court's Office within thirty (30) days. Any motion for an extension of time must be accompanied by a proposed order.

83.VII.05: *Commissioner's Brief.* The Commissioner will be allowed forty (40) days after service of the petitioner's brief to file its responsive brief. No extensions will be granted. The petitioner's reply brief, if any, will be filed within ten (10) days after service of the Commissioner's brief.

83.VII.06: *Service of Briefs.* Briefs shall be served on each of the other parties.

83.VII.07: *Application for Attorney's Fees.* The following procedure will be used if the petitioner's attorney applies to the Court for an order fixing attorney's fees *to be paid out of past accrued benefits* for an award of past due benefits. This Local Civil Rule does not apply to fees awarded pursuant to the Equal Access to Justice Act.

- (A) The original of any petition for attorney's fees will be filed with the Clerk of Court together with a certificate of service showing a copy served on the United States Attorney. The petition for attorney's fees shall be filed within sixty (60) days after the expiration date for filing a notice of appeal or petition for writ of certiorari or affirmance of the judgment on appeal. Noncompliance with this time limit shall be deemed a waiver of any claim for attorney's fees.
- (B) The petition should comply with the requirements set forth in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978), and should contain evidence (copy of Certificate of Social Insurance Award) that the case has reached the final determination, that the Commissioner is withholding the fee requested, and that the attorney and client entered a valid agreement for the fees. It should also contain a supporting statement or affidavit by the attorney if a substantial amount is involved or there are exceptional circumstances.
- (C) The United States Attorney shall be allowed thirty (30) days in which to file any objections to the petition for attorney's fees.
- (D) The petition, together with supporting materials and the Commissioner's objection, if any, will be forwarded to the appropriate District Judge or Magistrate Judge for consideration.

83.VII.08: *Objections to Report and Recommendation.* A party may file an objection to the Magistrate Judge's report and recommendation within the time prescribed in 28 U.S.C. § 636(b)(1).

## ACTIONS FILED BY PRISONERS

83.VIII.01: *Filing of Civil Rights Actions.* All complaints filed by state, federal, and local prisoners seeking relief under 42 U.S.C. § 1983, *et seq.*, or under the holding in *Bivens v. Six Unknown Members of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), shall be filed with the Clerk of Court in compliance with the instructions of the Office of the Clerk of Court on the appropriate form(s) or on forms substantially similar. Instructions and the appropriate forms may be obtained from the Office of the Clerk of Court without charge.

83.VIII.02: *Procedure for State, Federal, and Local Prisoners Seeking to Proceed In Forma Pauperis.* The Court shall maintain an operating procedure for prisoners seeking to proceed *in forma pauperis*. The operating procedure, which is set forth in the Orders filed in Misc. No. 4:96-MC38-2 (June 20, 1996) and in Misc. No. 3:96-MC225-12 (November 1, 1996) shall be fully effective as if reprinted in these Local Civil Rules.

83.VIII.03: *Filing of Habeas Corpus Actions.* All petitions filed by state, federal, and local prisoners seeking relief under 28 U.S.C. § 2254 or 28 U.S.C. § 2255 shall be filed with the Clerk of Court in compliance with the instructions of the Office of the Clerk of Court and on the appropriate forms or forms substantially similar. The instructions and the appropriate forms may be obtained from the Office of the Clerk of Court without charge.

83.VIII.04: *Successive Habeas Corpus Petitions.* The Anti-Terrorism and Effective Death Penalty Act of 1996 has placed limitations on successive petitions. In light of conflicting precedents in various federal jurisdictions and because most closed case records are at the Federal Records Center, a Magistrate Judge or District Judge may, in his or her discretion, authorize service of a petition under 28 U.S.C. § 2254 or 2255 where court records do not conclusively show that a petition is successive. In such circumstances, the respondents may raise successiveness as an affirmative defense.

83.VIII.05: *Federal Prisoners Seeking Relief under 28 U.S.C. § 2241.* All petitions filed by federal prisoners seeking relief under 28 U.S.C. § 2241 shall be filed with the Clerk of Court in compliance with the instructions and on the appropriate forms or on forms substantially similar. The instructions and the appropriate form(s) may be obtained from the Office of the Clerk of Court without charge.

83.VIII.06: *State and Local Prisoners Seeking Relief under 28 U.S.C. § 2241.* There is no standard form for state and local prisoners to use when seeking relief under 28 U.S.C. § 2241. Hence, state and local prisoners seeking relief under 28 U.S.C. § 2241 may prepare their own § 2241 petitions.

83.VIII.07: *Forms on Electronic Media.* The Office of the Clerk of Court is authorized to promulgate the civil rights forms or any habeas corpus forms on electronic media and is authorized to

distribute copies of the forms to correctional institutions, detention institutions, or litigants. Such forms on electronic media, if promulgated, shall be deemed to be “forms substantially similar” to the appropriate forms.



## BANKRUPTCY PRACTICE

83.IX.01: *Referral to Bankruptcy Judges.* Pursuant to 28 U.S.C. § 157(a), the Court hereby refers to the Bankruptcy Judges for this District all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11. *See* Procedures, 28 U.S.C. § 157.

83.IX.02: *Local Civil Rules of Bankruptcy Practice.* Pursuant to Bankruptcy Rule 9029, the Bankruptcy Judges of this District are hereby authorized to make such rules of practice and procedure as they may deem appropriate; provided, however, that in promulgating the rules governing the admission or eligibility to practice in the Bankruptcy Court, the Bankruptcy Judges shall require District Court admission except for appearances *pro se* or for appearances pursuant to the student practice rules of this Court.

- (A) *Pro hac vice* admission. The Bankruptcy Judges, as judicial officers of the District Court, are hereby empowered to grant *pro hac vice* admission to the District Court for bankruptcy matters under rules identical to this Court's rules on such admission.
- (B) *Exemption.* When appropriate, the Bankruptcy Judges may exempt certain filings such as the filing of claims from these requirements.

83.IX.03: *Jury Trials by Bankruptcy Judges.* The United States District Court for the District of South Carolina hereby specially designates the Bankruptcy Judges of this District to conduct jury trials pursuant to 28 U.S.C. § 157(e).